

<u>REQUEST FOR RECONSIDERATION</u>	Application #	10/569,963
	Confirmation #	3348
	Filing Date	January 29, 2007
	First Inventor	CUBRIC
	Art Unit	2881
	Examiner	Chang, Hanway
	Docket #	P08870US00/MP

Commissioner for Patents
P.O. Box 1450
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SIR:

In response to the Office Action dated June 2, 2009, please consider the following.

Claims 1-17 are pending in the present application but rejected on prior art grounds. Applicants respectfully request that the rejections be reconsidered and all claims found allowable based on the discussion which follows.

Claims 1-10 and 15-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mook et al., "Construction and characterization of the fringe field..." (hereinafter "Mook") in view of Kawanami et al., U.S. Patent No. 5,065,034 (hereinafter "Kawanami").

Contrary to the rejection to the claims as being obvious from Mook in view of Kawanami, Applicants respectfully submit that upon further consideration of claim 1, it will be determined that the present particle optical apparatus recited in independent claim 1 is patentably distinct over the individual or combined teachings of Mook and Kawanami. As the Examiner has correctly acknowledged Mook does not teach an aperture plate (nanoslit) located between a particle source (Schottky source) and the

monochromator filter assembly, as defined in claim 1, the sole independent claim.

However, the Examiner asserts that:

“it would have been obvious to one of ordinary skill in the art ... to rearrange the monochromator filter assembly and the aperture plate ...”

Applicants respectfully disagree with the Examiner’s assertion. Specifically such an assertion is flawed from a technical standpoint because the aperture plate (nanoslit) must be placed at an energy selection plane where the particle beam is focused (see Mook, page 130, left column, line 43 to page 130, right column, line 10) and so that the aperture plate (nanoslit) must be located after the monochromator filter as shown in Figure 1 of Mook. Therefore, it would not have been obvious to modify the location of the aperture plate as alleged in the Office Action in view of Mook.

Further, Kawanami does not disclose an aperture plate located before a monochromator filter assembly, as claimed, either. In fact, the charged particle beam apparatus of Kawanami does not even have a monochromator filter assembly. Accordingly, even if, *arguendo*, it would have been considered obvious to combine the teachings of Mook and Kawanami (a proposition which Applicants respectfully dispute), the combination arrived at would still not result in the claimed invention.

Furthermore, Applicants respectfully submit that it would not have been considered obvious “to modify the invention of Mook et al by having the aperture plate be adjustable ...” by combining the teachings of Mook and Kawanami, because Mook actually teaches away from using a movable slit (see Mook, page 130, left column, line 14).

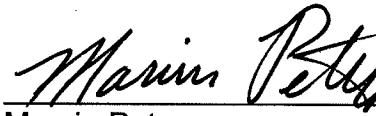
Based on the foregoing, Applicants respectfully submit that claims 1-10 and 15-17 are not obvious under 35 U.S.C. § 103(a) from Mook in view of Kawanami.

Claims 11-14 were rejection under 35 U.S.C. § 103(a) as being unpatentable over Mook in view of Kawanami, further in view of one or more of Brakenhoff, U.S. Patent No. 4,880,294 or Moriizumi, U.S. Patent No. 5,153,441 and Brittell, U.S. Patent No. 5,749,646. Applicants respectfully submit that claims 11-14 are not obvious in view of the aforementioned prior art references for at least the same reasons as discussed above with regard to the rejection of the claims from Mook in view of Kawanami as Mook and Kawanami fail to teach or in any way make obvious the subject matter of claim 1 from which claims 11-14 depend and the further cited prior art fails to make up the deficiencies of Mook and Kawanami with regard to the subject matter of claim 1. Accordingly, Applicants respectfully submit that claims 11-14 are not obvious in view of the cited prior art.

In view of the foregoing, Applicants respectfully submit that the present application is in condition for allowance.

Respectfully submitted,

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